

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 581

SOUTHLAND GASOLINE COMPANY, PETITIONER,

VS.

J. W. BAYLEY, HENRY V. BLOOM, G. C. KENDALL,
ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 10, 1942.

CERTIORARI GRANTED JANUARY 18, 1943.

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[fol. a]

[Caption omitted]

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**IN DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF ARKANSAS, FAY-
ETTEVILLE DIVISION**

Civil Action No. 29

J. W. BAYLEY, HENRY V. BLOOM, G. C. KENDALL, OWEN
REDING and W. J. BAYLEY, Plaintiffs,

vs.

SOUTHLAND GASOLINE COMPANY, Defendant

COMPLAINT—Filed January 2, 1942

The plaintiffs above named state that this is an action in which the plaintiffs are seeking to recover money under the provisions of the Act of the Congress of the United States, officially designated as the "Fair Labor Standards Act" of 1938."

The plaintiffs herein assert a right, the correct decision of which depends upon the construction and application of said Act and is a case over which the United States District Court have jurisdiction without regard as to the amount in controversy.

As a further allegation of the grounds upon which jurisdiction depends, plaintiffs state that the "Fair Labor [fol. 3] Standards Act of 1938," in Section 16 (B) thereof provides that an action to recover money under said Act may be maintained in any court of competent jurisdiction.

I

Plaintiffs allege that the above named defendant was on and since the 24th day of October, 1938, engaged in interstate commerce and in the production of goods for interstate commerce as defined by the said Fair Labor Standards Act of 1938.

Plaintiffs further allege that they are individual employees of said defendant and that plaintiff J. W. Bayley resides in Fort Smith, Arkansas, and that the other plaintiffs herein, Henry V. Bloom, G. C. Kendall, Owen Reding and W. J. Bayley reside in Springdale, Arkansas.

Plaintiffs further allege that

Defendant Southland Gasoline Company is a corporation duly created under the laws of the State of Arkansas and has its principal place of business in the City of Springdale, Arkansas.

Plaintiffs allege that each week during the period of time between October 24, 1938 and October 15, 1940 defendant corporation engaged in the gasoline business, and in pursuance of carrying on said gasoline business performed the following activities:

Defendant corporation each week purchased gasoline, automobile tires, batteries, and automobile accessories in the State of Oklahoma, caused aforesaid articles to be loaded upon defendant's trucks, and transported same to the State of Arkansas, where defendant corporation sold the gasoline, tires, batteries, and accessories in wholesale lots to retail establishments in the State of Arkansas, the retail establishments purchasing the above-mentioned commodities for the purpose of resale at retail to the general public.

Defendant corporation each week loaded trucks in the State of Arkansas with automobile tires, accessories, and automotive equipment, and transported aforesaid articles to the State of Oklahoma where the tires and other equipment was sold at wholesale to the retail establishments in that State for resale to the general public.

[fol. 4] Defendant corporation built and maintained service stations in Arkansas, and also built and maintained facilities for storing large quantities of gasoline and automotive merchandise, and that defendant in addition to the above stated enterprises, delivered gasoline and merchandise in very large quantities to such storage places to be stored until such time as the Southland Gasoline Co. should need same to supply their needs, and to sell to retail service stations in the State of Arkansas.

Defendant corporation in the conduct of its business aforesaid operated and maintained large trucks and tank cars, which trucks and tank cars made regular daily trips from Arkansas into Oklahoma, and from Oklahoma into Arkansas carrying gasoline and automotive merchandise in wholesale quantities for sale to the retail establishments in the state of destination.

Plaintiffs allege that defendant corporation engaged in the aforesaid trucking operations as a private carrier.

II

Plaintiffs allege that between the dates of October 24, 1938 and May 15, 1941 they were each employees of defendant corporation and that during each week between said dates each was as such employee of defendant engaged in interstate commerce and in producing goods for interstate commerce as set out in paragraph "I" above.

Plaintiffs allege that each was employed by the defendant as truck-drivers, and that each plaintiff in this capacity drove defendant's trucks each week from Arkansas to Oklahoma and from Oklahoma to Arkansas.

Plaintiffs allege that the trucks which each plaintiff drove for the defendant from Arkansas to Oklahoma and from Oklahoma to Arkansas were trucks which were used by defendant in carrying on the business practices and activities enumerated under paragraph "I" of this complaint.

Plaintiffs allege that each plaintiff as employee and defendant as employer were, each week since the date of October 24, 1938 to the date of May 15, 1941, engaged in interstate commerce and in the production of goods for interstate commerce, as fully set out in paragraph "I" above.

[fol. 5]

III

Plaintiff J. W. Bayley alleges that he worked for the defendant as above set out 100 weeks during the period of time between October 24, 1938 and October 15, 1940, and that he was not paid in accordance with the Fair Labor Standards Act for his work during this period.

The following table enumerates and sets out the weeks during this period of time in which weeks plaintiff Bayley was not paid in accordance with said Act. The table alleges the number of hours worked by plaintiff J. W. Bayley in each of these weeks, his compensation, and the amount to which he was entitled under the Fair Labor Standard Act of 1938, as follows:

Date	Weeks	Weekly Wage	Hours Worked	Hours O. T.	Time and at Half Time	Amount Due
1938						
10-24 10-29	1	\$20.00	60	16	50¢	\$8.00
10-31 11-5	1	\$20.00	55	11	54¢	\$5.94
11-7 11-12	1	\$20.00	52	8	60¢	4.80
11-14 11-19	1	\$20.00	61½	17½	50¢	8.75
11-28 12-3	1	\$20.00	60	16	50¢	8.00

Date	Weeks	Weekly Wage	Hours Worked	Hours O. T.	Time and at Half Time	Amount Due
1938						
12-5 12-10	1	\$20.00	56	12	52¢	6.24
12-12 12-17	1	\$20.00	57	13	53¢	6.89
12-19 12-24	1	\$20.00	54	10	54¢	5.40
12-26 12-31	1	\$20.00	53	9	60¢	5.40
1939						
1-2 1-7	1	\$20.00	59	15	50¢	7.50
1-9 1-14	1	\$20.00	58½	14½	51¢	7.39
1-16 1-21	1	\$20.00	59½	15½	50¢	7.75
1-23 1-28	1	\$20.00	56	12	52¢	6.24
1-30 2-4	1	\$20.00	57½	13½	53¢	6.90
2-6 2-11	1	\$20.00	56½	12½	52¢	6.24
2-13 2-18	1	\$20.00	62	18	48¢	8.64
2-20 2-25	1	\$20.00	56	12	52¢	6.24
2-27 3-4	1	\$20.00	59	15	50¢	7.50
3-6 3-11	1	\$20.00	61½	17½	50¢	8.50
3-13 3-18	1	\$20.00	64	20	47¢	9.40
3-20 3-25	1	\$20.00	69	25	43¢	10.75
3-27 4-1	1	\$20.00	60½	16½	50¢	8.25
4-3 4-8	1	\$20.00	60	16	50¢	8.00
4-10 4-16	1	\$20.00	71½	27½	42¢	11.34
4-17 4-22	1	\$20.00	70	26	43¢	11.18
[fol. 6]						
4-24 4-30	1	\$20.00	65	21	45¢	9.45
5-1 5-6	1	\$20.00	74	30	40¢	12.00
5-8 5-13	1	\$20.00	65	21½	45¢	9.67
5-15 5-20	1	\$20.00	68	24	43¢	10.32
5-22 5-26	1	\$20.00	51	7	58¢	4.06
5-28 6-3	1	\$20.00	73	29	41¢	11.89
6-5 6-11	1	\$20.00	66½	22½	45¢	9.90
6-12 6-17	1	\$20.00	82	38	37½	14.25
6-19 6-25	1	\$20.00	65	21	45¢	9.45
6-26 7-1	1	\$20.00	65½	21½	45¢	9.45
7-3 7-8	1	\$20.00	61	17	50¢	8.50
7-9 7-15	1	\$20.00	86	42	37¢	15.75
7-24 7-29	1	\$20.00	83½	39½	37½@	14.57
7-31 8-5	1	\$20.00	58	14	51¢	7.14
8-7 8-12	1	\$22.50	88	44	38¢	16.72
8-14 8-20	1	\$22.50	68½	24½	50¢	12.00
8-21 8-26	1	\$22.50	56	12	60¢	7.20
8-28 9-3	1	\$22.50	70	26	48¢	12.48
9-4 9-9	1	\$22.50	76	32	45¢	14.40
9-11 9-17	1	\$22.50	63½	19½	52¢	9.88
9-18 9-23	1	\$22.50	63	19	52¢	9.88
9-25 9-30	1	\$22.50	55½	11½	60¢	6.90
10-2 10-7	1	\$22.50	81	37	41¢	15.17
10-9 10-15	1	\$22.50	71½	27½	47¢	12.69
10-16 10-22	1	\$22.50	77	33	44¢	14.52
10-24 10-29	1	\$22.50	66½	24½	51¢	12.45
10-30 11-4	1	\$22.50	76	34	45¢	15.30
11-6 11-11	1	\$22.50	58	14	57¢	7.98
11-13 11-18	1	\$ Vacation				
11-20 11-26	1	\$22.50	68	26	50¢	13.00
11-27 12-3	1	\$22.50	73	31	45¢	13.95
12-5 12-10	1	\$22.50	59	17	57¢	9.69
12-11 12-16	1	\$22.50	65	23	52¢	11.96
12-18 12-23	1	\$22.50	56½	14½	60¢	8.40
12-26 12-30	1	\$22.50	55	13	60¢	7.80
1940						
1-1 1-6	1	\$22.50	56½	14½	60¢	8.40
1-8 1-13	1	\$22.50	62	20	53¢	10.60
1-15 1-20	1	\$22.50	61	19	54¢	10.46

Date	Weeks	Weekly Wage	Hours Worked	Hours O. T.	Time and at Half Time	Amount Due
1940						
1-21	1-25	1	\$22.50	49	7	67¢ 4.69
1-30	2-31	1	\$22.50	60	18	55¢ 9.90
2-5	2-10	1	\$22.50	62	20	53¢ 10.60
2-12	2-17	1	\$22.50	62	20	53¢ 10.60
2-19	2-24	1	\$22.50	60	18	55¢ 9.90
2-26	3-3	1	\$22.50	72	30	46¢ 13.80
3-4	3-9	1	\$22.50	62	20	53¢ 10.60
3-11	3-16	1	\$22.50	58	16	57¢ 9.12
[Feb. 7]						
3-18	3-23	1	\$22.50	75	33	45¢ 14.85
3-25	3-31	1	\$22.50	64	22	53¢ 11.66
4-1	4-6	1	\$22.50	71	29	47¢ 12.63
4-8	4-14	1	\$22.50	61	19	54¢ 10.46
4-15	4-19	1	\$22.50	64	22	53¢ 11.66
4-22	4-28	1	\$22.50	64½	22½	53¢ 11.66
4-29	5-5	1	\$22.50	86½	44½	45¢ 19.80
5-6	5-12	1	\$22.50	70	28	48¢ 13.44
5-13	5-17	1	\$22.50	70½	28½	48¢ 13.44
5-20	5-26	1	\$22.50	66	24	51¢ 12.24
5-27	5-31	1	\$22.50	70	28	48¢ 13.44
6-5	6-9	1	\$22.50	62½	20½	53¢ 10.60
6-10	6-15	1	\$22.50	84	42	45¢ 18.90
6-17	6-23	1	\$22.50	65½	23½	52¢ 11.96
6-24	6-29	1	\$22.50	81½	39½	45¢ 16.77
7-1	7-7	1	\$22.50	56½	14½	60¢ 8.40
7-8	7-13	1	\$22.50	86	44	45¢ 19.80
7-15	7-21	1	\$22.50	62½	20½	53¢ 10.60
7-22	7-27	1	\$22.50	82	40	45¢ 18.00
7-29	8-3	1	\$22.50	54	12	61¢ 7.32
8-5	8-10	1	\$22.50	58	16	57¢ 9.12
8-12	8-17	1	\$22.50	58	16	57¢ 9.12
8-19	8-24	1	\$22.50	55	13	61¢ 7.93
8-26	8-31	1	\$22.50	56	14	60¢ 8.40
9-2	9-7	1	\$22.50	85	43	45¢ 19.35
9-9	9-15	1	\$22.50	65	23	52¢ 11.96
9-16	9-21	1	\$22.50	70	28	48¢ 13.44
9-23	9-29	1	\$22.50	67	25	50¢ 12.50
9-30	10-5	1	\$22.50	88	46	45¢ 20.70
10-7	10-13	1	\$22.50	64	22	53¢ 11.66

Total Over-Time \$1070.29.

Plaintiff, J. W. Bayley alleges that during the 100 weeks between October 24, 1938 and October 15, 1940, as above set out, the Fair Labor Standards Act was in force and effect and provided for a minimum wage of 25¢ per hour and a maximum hours of 44 hours per week from October 24, 1938, to October 24, 1939, and that said Act provided for a minimum wage of 30¢ per hour and a maximum week of 42 hours from October 24, 1939 to October 24, 1940, and also provides for time and one-half time for hours worked over the maximum at the regular rate of pay, and not less than the minimum wage.

Plaintiff J. W. Bayley further alleges that the number of hours worked each week divided into the salary or wage [fol. 8] paid constitutes the average hourly wage, and that during all of the time he worked for the defendant he performed the duties and activities set out on Paragraph "I" of this complaint, and that he has due him the sum of \$1070.29, for over-time compensation as set out in the above table, that no part thereof has been paid and that he should have judgment against the defendant for said sum together with an additional equal amount as liquidated damages, together with an allowance for fees for his attorneys, together with all cost of this action.

IV

Plaintiff Henry V. Bloom alleges that he began working for defendant July 28, 1940 and continued such work until May 10, 1941; that as such employee he drove a truck for defendant and performed other duties required of him by defendant, said activities being set out more fully in paragraph "I" of this complaint; that from July 28, 1940 to October 15, 1940 he worked for defendant 11 weeks, 72 hours each week, and received as salary \$15.00 per week.

Plaintiff Henry V. Bloom further alleges that from October 15, 1940 to January 1, 1941 he worked for defendant, performing the same duties, a total of 11 weeks, and worked 72 hours each week, and received a wage of \$16.25 per week; that from January 6, 1941 to May 10, 1941 he continued work for defendant, driving a truck for defendant and engaged in the activities specifically set out in paragraph "I" of this complaint, 9 weeks of which time plaintiff Bloom was not paid in accordance with the provisions of the Fair Labor Standards Act. Plaintiff Henry V. Bloom alleges that the following table sets forth weeks during this period of time in which weeks he was not compensated in accordance with the Fair Labor Standards Act, the hours worked during each of such weeks, the pay received, and the amount plaintiff Bloom is entitled to recover, as follows:

[fol. 9]

Date	Weeks	Weekly Wage	Hours Worked	Hours O. T.	Time and Half-Time	Amount Due Plaintiff
1940						
7-28 8-3	1	\$16.25	72	30	45¢	\$13.50
8-4 8-10	1	\$16.25	72	30	45¢	13.50
8-11 8-17	1	\$16.25	72	30	45¢	13.50
8-18 8-24	1	\$16.25	72	30	45¢	12.50
8-25 8-31	1	\$16.25	72	30	45¢	13.50
9-1 9-7	1	\$16.25	72	30	45¢	13.50
9-8 9-14	1	\$16.25	72	30	45¢	13.50
9-15 9-21	1	\$16.25	72	30	45¢	13.50
9-22 9-28	1	\$16.25	72	30	45¢	13.50
9-29 10-5	1	\$16.25	72	30	45¢	13.50
10-6 10-12	1	\$16.25	72	30	45¢	13.50

October 15, 1940 Over Time \$148.50

Plaintiff, Henry V. Bloom, alleges that he is entitled to minimum wages under said Act from the 15th day of October, 1940, to the 10th day of May, 1941, as set forth in the following table:

Date 1941	Week	Am't Rec'd.	Hours Worked	Should Have Rec'd 30¢ Per Hour or	Difference	Amount Due
1-6 1-12	1	\$16.25	78½	\$23.55	\$7.30	\$7.30
2-9 2-15	1	\$16.25	66	\$19.80	3.55	3.55
2-23 3-1	1	\$16.25	63	\$18.90	2.65	2.65
3-24 3-30	1	\$16.25	66	\$19.80	3.55	3.55
3-31 4-5	1	\$16.25	55	\$16.50	.25	.25
4-6 4-12	1	\$16.25	74½	\$22.35	6.10	6.10
4-13 4-19	1	\$16.25	69	\$20.70	4.45	4.45
4-20 4-25	1	\$16.25	64	\$19.20	2.95	2.95
5-5 5-10	1	\$16.25	61½	\$18.45	2.20	2.20

Amount Due Under Minimum Wage \$ 91.85
 Amount Due Under Over Time 148.50

Total Amount Due \$240.35

The plaintiff, Henry V. Bloom, further alleges that during the time between July 28, 1940, and May 10, 1941, as shown in the above table, the Fair Labor Standards Act was in force and effect and provided for a minimum wage of 30¢ per hour and also provided for a maximum week of 42 hours up to October 24, 1940, and also provides for payment of time and half time for all over-time up to and [fol. 10] including October 15, 1940, at the regular rate per week, if not less than the minimum wage was paid.

The plaintiff, Henry V. Bloom, further alleges that the number of hours worked each week divided into the weekly wage or minimum wage determines the rate per hour and establishes the hourly wage as used in the above table, and that during all the time he worked for said defendant as set out in the above table, he performed the duties and

activities as defined and set out in paragraph one of this complaint and that he has now due him the sum of \$48.50, under the over-time provision or maximum hours provision of said Act and the further sum of \$91.85, under the minimum wage provision of said Act or a total of \$240.35, and that no part thereof has been paid and that he should have judgment against the said defendant for said sum together with a like amount for penalty, together with attorney fees for his attorneys and all cost of this action as provided for by said Fair Labor Standards Act.

V

The plaintiff, G. C. Kendall, alleges that he began working for the above named defendant, operating one of its trucks and performing the other duties and activities for defendant as employee as set out in paragraph one of this complaint, on the 8th day of December, 1939, and continued as such employee until the 15th day of May, 1941, and received the sum of \$90.00, per month or \$22.50, per week during said period of time.

Plaintiff, G. C. Kendall, further states that from the said 8th day of December, 1939, to the 15th day of October, 1940, he worked for said defendant as above set out 43 weeks of 90 hours each week, of which 90 hours so worked, 48 hours each week were over-time as defined by the said Fair Labor Standards Act and that the said 90 hours divided into his weekly wage of \$22.50, was therefore less than the minimum wage of 30c per hour as provided by said Act and that he is entitled to time and half-time for said over-time at the rate of 30c per hour over-time or 45c per hour for said over-time.

Plaintiff, G. C. Kendall, states and alleges that he has not been paid for said over-time and that he is entitled to the sum of \$21.60 per week for 43 weeks or a total of \$928.80.

[fol. 11] Plaintiff, G. C. Kendall, alleges that from October 15, 1940, to November 1, 1940 he worked for said defendant as above set out two weeks of 90 hours each week, for which he was not paid the minimum wage as provided for by said Act, in that he was paid only \$22.50, and should have been paid \$27.00, per week as required by said Act and that he has due him the sum of \$4.50, per week or a total for said two weeks the sum of \$9.00.

Plaintiff, G. C. Kendall, further alleges that he worked for said defendant as above set out from November 1, to November 6, 1940, one week of 81 hours, for which he received the sum of \$22.50, and that he should have received under said Act the sum of \$24.30, and that he has due him under said Act the sum of \$1.80, and that he has due him, for all the time above set forth, the total sum of \$939.60; and that no part thereof has been paid and that he should have judgment against said defendant for said sum together with a like amount for penalty, attorney fees and court cost as provided for by said Fair Labor Standards Act.

VI

The plaintiff, Owen Reding, alleges that he began working for the defendant, operating one of its trucks and performing the other duties and activities as employee as set out in paragraph "1" of this complaint, on the 24th day of October, 1938, and continued as such employee continuously up to the 11th day of May, 1941.

Plaintiff, Owen Reding, further alleges that he as such employee from the 24th day of October, 1938 up to the 24th day of December, 1938, he worked for said defendant (9) weeks of (60) hours per week and received a weekly wage of \$12.00 each week, or \$48.00 per month, and from December 24, 1938 up to April 29, 1939, he as such employee received the sum of \$48.00 per month or \$12.00 per week, worked irregular hours, as will be set out in the table or tabulation to follow. Said plaintiff alleges that from the said April 29, 1939, up to and including June 17th, 1939, he as such employee of defendant received a salary of \$60.00 per month or \$15.00 per week, and again worked irregular hours each week as will appear from his said table or tabulation to follow.

Plaintiff alleges that from June 24th, 1939 to May 18, 1940 he continued to work for defendant as above set out, [fol. 12] and received a wage of \$65.00 per month or \$16.25 per week, and worked irregular hours each week, as will — shown by the said table or tabulation to follow.

Plaintiff Owen Redding alleges that from the 20th day of May, 1940 up to and including the 11th day of May, 1941, he as such employee of the said defendant continued to work and received each week as wages the sum of \$70.00 per month or \$17.50 per week, and again worked irregular

hours, but the table or tabulation to follow will show the hours worked:

Plaintiff Reding alleges that the time worked, each week, the wages received, and the amount to which he is entitled to receive under the provisions of the Fair Labor Standards Act, are set out in the following table or tabulation as follows:

Date	Weeks	Weekly Wage	Hours Worked	Hours O. T.	Time and at Half Time	Amount Due
1938						
10-24 10-29	1	\$12 00	60	16	37½¢	\$6 00
10-31 11-3	1	\$12 00	60	16	37½¢	6 00
11-7 11-12	1	\$12 00	60	16	37½¢	6 00
11-14 11-19	1	\$12 00	60	16	37½¢	6 00
11-21 11-26	1	\$12 00	60	16	37½¢	6 00
11-28 12-3	1	\$12 00	60	16	37½¢	6 00
12-5 12-10	1	\$12 00	60	16	37½¢	6 00
12-12 12-17	1	\$12 00	60	16	37½¢	6 00
12-19 12-24	1	\$12 00	60	16	37½¢	6 00
12-26 12-31	1	\$12 00	65	21	37½¢	7 87
1939						
1-2 1-7	1	\$12 00	69½	25½	37½¢	9 56
1-9 1-14	1	\$12 00	66	22	37½¢	8 25
1-16 1-21	1	\$12 00	74	30	37½¢	11 25
1-24 1-28	1	\$12 00	58	14	37½¢	5 25
1-30 2-4	1	\$12 00	64	24	37½¢	7 00
2-6 2-11	1	\$12 00	65	21	37½¢	8 17
2-13 2-18	1	\$12 00	60½	16½	37½¢	6 18
2-20 2-25	1	\$12 00	64½	20½	37½¢	7 18
2-27 3-4	1	\$12 00	61½	17½	37½¢	6 65
3-6 3-11	1	\$12 00	64	20	37½¢	7 00
3-13 3-16	1	\$12 00	71½	27½	37½¢	10 31
3-20 3-25	1	\$12 00	68½	24½	37½¢	9 18
3-27 4-1	1	\$12 00	63½	19½	37½¢	6 82
4-3 4-8	1	\$12 00	74½	30½	37½¢	11 43
4-10 4-15	1	\$12 00	61	17	37½¢	6 37
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4-17 4-22	1	\$12 00	57	13	37½¢	4 87
4-24 4-29	1	\$12 00	76	32	37½¢	12 00
5-1 5-3	1	\$15 00	63½	19½	37½¢	6 82
5-8 5-13	1	\$15 00	63½	19½	37½¢	6 82
5-15 5-20	1	\$15 00	64	20	37½¢	7 00
5-22 5-27	1	\$15 00	65½	21½	37½¢	7 55
5-29 6-3	1	\$15 00	64	20	37½¢	7 00
6-5 6-10	1	\$15 00	63	19	37½¢	6 63
6-12 6-17	1	\$15 00	70	26	37½¢	9 75
6-19 6-24	1	\$16 25	62	18	37½¢	6 26
6-26 7-1	1	\$16 25	71	27	37½¢	10 13
7-3 7-8	1	\$16 25	54	10	37½¢	3 75
7-10 7-15	1	\$16 25	66	22	37½¢	8 25
7-17 7-22	1	\$16 25	65	21	37½¢	7 37
7-24 7-29	1	\$16 25	65	21	37½¢	7 37
7-31 8-5	1	\$16 25	68½	24½	37½¢	9 18
8-7 8-12	1	\$16 25	60	16	37½¢	6 00
8-14 8-19	1	\$16 25	62½	18½	37½¢	6 44
8-21 8-26	1	\$16 25	63	19	37½¢	6 63
8-28 9-2	1	\$16 25	60	16	37½¢	6 00
9-4 9-9	1	\$16 25	60	16	37½¢	6 00
9-11 9-17	1	\$16 25	69½	25½	37½¢	9 37

Date	Weeks	Weekly Wage	Hours Worked	Hours O. T.	Time and at Half Time	Amount Due
1939						
9-26 9-30	1	\$16.25	50½	6½	43¢	2.19
10-2 10-7	1	\$16.25	60	16	41¢	6.56
10-9 10-14	1	\$16.25	57	13	42¢	5.46
10-16 10-21	1	\$16.25	61	17	40¢	6.80
10-23 10-28	1	\$16.25	56	14	45¢	6.30
10-30 11-4	1	\$16.25	56	14	45¢	6.02
11-6 11-11	1	\$16.25	62½	20½	45¢	9.22
11-13 11-18	1	\$16.25	77½	35½	45¢	15.97
11-20 11-25	1	\$16.25	61½	19½	45¢	8.77
11-27 12-2	1	\$16.25	49	7	49¢	3.43
12-4 12-9	1	\$16.25	57	13	45¢	6.75
12-11 12-16	1	\$16.25	60	18	45¢	8.10
12-18 12-22	1	\$16.25	52	10	46¢	4.60
12-26 12-31	1	\$16.25	82	40	45¢	18.00
1940						
1-1 1-5	1	\$16.25	55	13	45¢	5.85
1-8 1-13	1	\$16.25	64½	22½	45¢	10.12
1-14 1-20	1	\$16.25	74½	32½	45¢	14.62
1-21 1-27	1	\$16.25	72	30	45¢	13.50
1-29 2-3	1	\$16.25	66	24	45¢	10.80
2-5 2-11	1	\$16.25	82	40	45¢	18.00
2-14 2-20	1	\$16.25	63	21	45¢	9.45
[fol. 14]						
2-23 2-29	1	\$16.25	68	26	45¢	11.70
3-4 3-9	1	\$16.25	55	13	45¢	5.85
3-11 3-16	1	\$16.25	64½	22½	45¢	10.12
3-18 3-23	1	\$16.25	74½	32½	45¢	14.62
3-25 3-30	1	\$16.25	72	30	45¢	13.50
4-1 4-5	1	\$16.25	57	15	45¢	6.75
4-8 4-13	1	\$16.25	78	36	45¢	16.20
4-15 4-20	1	\$16.25	64	22	45¢	9.90
4-22 4-27	1	\$16.25	64	22	45¢	9.90
4-29 5-4	1	\$16.25	66	24	45¢	10.80
5-6 5-11	1	\$16.25	64½	22½	45¢	10.12
5-13 5-18	1	\$16.25	66	24	45¢	10.80
5-20 5-25	1	\$16.25	71	29	45¢	13.05
5-28 6-1	1	\$17.50	55	13	45¢	5.85
6-3 6-8	1	\$17.50	65	23	45¢	10.35
6-10 6-15	1	\$17.50	67	25	45¢	11.25
6-17 6-22	1	\$17.50	67	25	45¢	11.25
6-24 6-29	1	\$17.50	66½	24½	45¢	11.02
7-1 7-6	1	\$17.50	57½	15½	45¢	6.97
7-8 7-13	1	\$17.50	72	30	45¢	13.50
7-15 7-20	1	\$17.50	72	30	45¢	13.50
7-22 7-28	1	\$17.50	84	42	45¢	18.90
7-29 8-3	1	\$17.50	63½	21½	45¢	9.67
8-5 8-10	1	\$17.50	60	18	45¢	8.10
8-12 8-17	1	\$17.50	63	21	45¢	9.45
8-19 8-24	1	\$17.50	69	27	45¢	12.15
8-26 8-31	1	\$17.50	61	19	45¢	8.55
9-2 9-7	1	\$17.50	67	25	45¢	11.25
9-9 9-13	1	\$17.50	55½	13½	45¢	6.02
9-24 9-30	1	\$17.50	65½	23½	45¢	10.57
10-1 10-5	1	\$17.50	54	12	48¢	5.76
10-7 10-12	1	\$17.50	62½	20½	45¢	9.22

Amount Due Under Over Time \$855.23

Plaintiff, Owen Reding, alleges that he is entitled to minimum wages under said Act from the 15th day of October, 1940, up to the 11th day of May, 1941, at the rate of 30c per hour as set forth in the extended table of tabulation:

Date	Weeks	Am't Rec'd	Hours Worked	Should Have Rec'd 30c Per Hour, or	Difference	Amount Due
1940						
10-14 10-19	1	\$17.50	85	\$25.50	\$8.00	\$8.00
10-21 10-26	1	\$17.50	82	24.60	7.10	7.10
11-18 11-24	1	\$17.50	78	23.40	5.90	5.90
12-1 12-7	1	\$17.50	74½	22.35	4.85	4.85
[fol. 15]						
1941						
12-30 1-5	1	\$17.50	82	24.60	7.10	7.10
1-13 1-19	1	\$17.50	74	22.20	4.70	4.70
1-20 1-26	1	\$17.50	81	24.30	6.80	6.80
2-19 2-25	1	\$17.50	69½	20.85	3.35	3.35
3-1 3-7	1	\$17.50	69½	20.85	3.35	3.35
3-11 3-17	1	\$17.50	69½	19.35	1.85	1.85
3-18 3-24	1	\$17.50	71½	21.45	3.95	3.95
4-1 4-7	1	\$17.50	62	18.60	1.10	1.10
4-23 5-4	1	\$17.50	67½	20.25	2.75	2.75
5-5 5-11	1	\$17.50	65	19.50	2.00	2.00
Amount Due For Minimum Wages						\$ 62.80
Amount Due For Over Time						885.23
Total Amount Due						\$948.03

The plaintiff, Owen Reding further alleges that during the time he was employed by the defendant as set forth in the above and foregoing tables, the Fair Labor Standards Act was in force and effect and that he is entitled to the benefits and provisions of said Act and that he should be allowed time and half for all overtime as shown in the above table, which is arrived at by dividing the number of hours worked each week in to the amount of his weekly wage shown in said table and that the said tables correctly set out the time he worked and the wages he received and the amount he is entitled to receive under the said Fair Labor Standards Act and that the amount of \$885.23, is justly due him under the maximum hours provision of the said Act and that \$62.80, is justly due him under the minimum wage provision of said Act and that no part thereof has been paid and that he should have judgment against the said defendant for the said sum of \$948.03, together with a like amount for penalty, attorney fees and court cost as provided for by the said Fair Labor Standards Act.

VII

Plaintiff W. J. Bayley alleges that he began working for said defendant as a truck driver performing the duties and activities set out and described in paragraph one and two of this complaint, on October 24, 1938, and continued to work for defendant as such employee engaged in such work up to the 15th day of October, 1940.

[fol. 16] Plaintiff further alleges that from the said 24th day of October, 1938, up the 24th day of August, 1939, he received a salary of \$80.00 per month, or \$20.00 per week and from the said 24th day of August, 1939, up to the said 15th day of October, 1940, he continued as such employee of defendant and received a salary or wage of \$90.00, per month or \$22.50, per week.

Plaintiff, W. J. Bayley alleges that he worked as such employee each week irregular hours and that the time, worked each week, the date thereof, the wage received, the amount of over-time worked and the rate to which he is entitled therefor is set forth in detail in the following table or tabulation as follows:

Date	Weeks	Weekly Wage	Hours Worked	Hours O. T.	Time and at Half Time	Amount Due
1938						
10-24 10-29	1	\$20.00	66	22	" 45¢	\$9.90
10-31 11-5	1	\$20.00	66	22	" 45¢	9.90
11-7 11-12	1	\$20.00	66	22	" 45¢	9.90
11-14 11-19	1	\$20.00	66	22	" 45¢	9.90
11-21 11-26	1	\$20.00	64	22	" 46¢	9.20
11-28 12-3	1	\$20.00	66	22	" 45¢	9.90
12-5 12-10	1	\$20.00	64	20	" 45¢	9.20
12-12 12-17	1	\$20.00	62	18	" 48¢	8.64
12-19 12-24	1	\$20.00	62	18	" 48¢	8.64
12-27 12-31	1	\$20.00	60	16	" 48¢	7.68
1939						
1-2 1-7	1	\$20.00	59	15	" 50¢	7.50
1-9 1-14	1	\$20.00	60	16	" 49¢	7.84
1-16 1-21	1	\$20.00	61½	17½	" 48¢	8.40
1-23 1-28	1	\$20.00	55½	11½	" 54¢	6.21
1-30 2-4	1	\$20.00	63	19	" 48¢	9.12
2-6 2-11	1	\$20.00	56½	12½	" 52¢	6.50
2-13 2-19	1	\$20.00	75	31	" 40¢	12.40
2-20 2-25	1	\$20.00	62½	18½	" 48¢	8.88
2-27 3-4	1	\$20.00	55½	11½	" 54¢	6.21
3-6 3-11	1	\$20.00	64	20	" 46¢	9.20
3-13 3-18	1	\$20.00	62	18	" 48¢	8.64
3-20 3-25	1	\$20.00	62	18	" 48¢	8.64
3-27 4-1	1	\$20.00	68	24	" 44¢	10.56
4-3 4-9	1	\$20.00	65	21	" 45¢	9.45
4-10 4-15	1	\$20.00	59	15	" 50¢	7.50
4-17 4-22	1	\$20.00	57½	13½	" 51¢	6.88
4-24 4-29	1	\$20.00	65	21	" 45¢	9.45

	Date	Weeks	Weekly Wage	Hours Worked	Hours O. T.	Time and at Half Time	Amount Due.
1939							
[fol. 17]							
5-1	5-6	1	\$20 00	66	22	45¢	9 90
5-8	5-13	1	\$20 00	64	20	46¢	9 20
5-15	5-20	1	\$20 00	64	20	46¢	9 20
5-22	5-27	1	\$20 00	83	39	37½¢	14 62
5-29	6-3	1	\$20 00	68	24	44¢	10 56
6-5	6-10	1	\$20 00	64	20	46¢	9 20
6-12	6-17	1	\$20 00	61	17	48¢	8 16
6-9	6-24	1	\$20 00	63	19	48¢	9 12
6-26	7-1	1	\$20 00	67	23	45¢	10 35
7-3	7-8	1	\$20 00	53½	9½	54¢	5 13
7-10	7-15	1	\$20 00	85	21	45¢	9 45
7-17	7-22	1	\$20 00	61½	17½	48¢	8 40
7-24	7-29	1	\$20 00	60	16	49¢	7 84
7-31	8-6	1	\$20 00	80	36	37½¢	13 50
8-7	8-12	1	\$20 00	61	17	48¢	8 16
8-14	8-19	1	\$20 00	70	26	42¢	10 92
8-21	8-26	1	\$22 50	63	19	53¢	10 07
9-5	9-10	1	\$22 50	60	16	56¢	8 96
9-11	9-16	1	\$22 50	60	16	56¢	8 96
9-18	9-23	1	\$22 50	62	18	54¢	9 72
9-25	9-30	1	\$22 50	58	14	57¢	7 98
10-2	10-7	1	\$22 50	61	17	55¢	9 35
10-9	10-14	1	\$22 50	61½	17½	54¢	9 45
10-16	10-21	1	\$22 50	62½	18½	54¢	9 99
10-23	10-28	1	\$22 50	60	18	56¢	10 08
10-30	11-4	1	\$22 50	61	19	65¢	10 45
11-6	11-11	1	\$22 50	57	15	58¢	8 70
11-13	11-18	1	\$22 50	63	21	53¢	11 13
11-20	11-25	1	\$22 50	59	17	57¢	9 69
11-27	12-2	1	\$22 50	50	8	67¢	5 36
12-4	12-9	1	\$22 50	61	19	55¢	10 45
12-11	12-17	1	\$22 50	67	25	50¢	12 50
12-18	12-23	1	\$22 50	69	27	48¢	12 96
12-26	12-31	1	\$22 50	68	26	49¢	12 74
1940							
1-15	1-20	1	\$22 50	57	15	58¢	8 70
1-22	1-27	1	\$22 50	62½	20½	54¢	11 07
1-29	2-3	1	\$22 50	54	12	61¢	7 32
2-5	2-10	1	\$22 50	60	18	56¢	10 08
2-12	2-17	1	\$22 50	61	19	55¢	10 45
2-19	2-24	1	\$22 50	63	21	54¢	11 34
2-26	3-2	1	\$22 50	68½	26½	50¢	13 25
3-4	3-9	1	\$22 50	64½	22½	52¢	11 70
3-11	3-16	1	\$22 50	60	18	56¢	10 08
[fol. 18]							
3-18	3-23	1	\$22 50	60½	18½	55¢	10 17
3-25	3-30	1	\$22 50	72	30	46¢	13 80
4-1	4-6	1	\$22 50	66	24	51¢	12 24
4-8	4-13	1	\$22 50	66	22	51¢	12 24
4-15	4-20	1	\$22 50	65	23	52¢	11 96
4-22	4-27	1	\$22 50	62½	20½	54¢	11 07
4-29	5-4	1	\$22 50	63½	21½	54¢	11 61
5-6	5-11	1	\$22 50	67	25	50¢	12 50
5-13	5-18	1	\$22 50	64	22	52¢	11 44
5-20	5-25	1	\$22 50	62½	20½	54¢	11 07
5-27	6-1	1	\$22 50	64½	22½	52¢	11 70
6-3	6-8	1	\$22 50	64½	22½	52¢	11 70
6-10	6-15	1	\$22 50	65	23	52¢	11 96

Date	Weeks	Weekly Wage	Hours Worked	Hours O. T.	Time and at Half Time	Amount Due
1940						
6-17	6-22	1	\$22.50	62	20 " 54¢	10.80
6-24	6-29	1	\$22.50	66½	24½ " 50¢	12.75
7-1	7-6	1	\$22.50	54	12 " 61¢	7.32
7-8	7-13	1	\$22.50	68	23 " 52¢	11.96
7-15	7-20	1	\$22.50	69	27 " 48¢	12.96
7-22	7-27	1	\$22.50	66½	24½ " 50¢	12.75
7-29	8-4	1	\$22.50	73½	31½ " 45¢	14.17
8-5	8-10	1	\$22.50	70½	28½ " 48¢	13.68
8-12	8-17	1	\$22.50	61	19 " 55¢	10.45
8-19	8-23	1	\$22.50	54	12 " 61¢	7.32
9-3	9-7	1	\$22.50	54	12 " 61¢	7.32
9-9	9-14	1	\$22.50	64½	22½ " 52¢	11.70
9-16	9-21	1	\$22.50	65½	23½ " 51½¢	11.98
9-23	9-28	1	\$22.50	62½	20½ " 54¢	11.07
9-30	10-5	1	\$22.50	64½	22½ " 52¢	11.70
10-7	10-12	1	\$22.50	63	21 " 54¢	11.34

Total Amount O. T. \$910.47

Plaintiff, W. J. Bayley, by way of explaining the above table or tabulation states that the number of hours worked each week divided into the weekly wage constitute the hourly wage and that hourly wage at the rate of one and one-half times the regular rate constitutes the over-time to which he is entitled unless the same is less than the minimum wage provided for by said Fair Labor Standards Act in which event one and one-half times the minimum wage is used and that this same method has been used in the computation of over-time for all the above named plaintiffs.

Plaintiff, W. J. Bayley alleges that the above table or tabulation correctly sets out the date of his employment, the hours worked each week, the wage received, the number of hours over-time to which he is entitled and the rate therefor and the amount due him therefor and that [fol. 19] the same is just, true and correct and no part thereof has been paid and that he is entitled to the said sum of \$910.47, and should have judgment therefor together with an equal amount for penalty together with attorney fees to be allowed his attorneys and all costs as provided for by Fair Labor Standards Act.

The above named plaintiffs each allege that they as employees of the said defendant each worked the periods of time alleged for each respectively in the tables incorporated in and made a part of this complaint; plaintiffs each allege also that each plaintiff has worked additional time overtime in the employ of the defendant, performing

the duties and activities specifically set forth in paragraph "1" of the plaintiff's complaint, for which time plaintiffs have no complete records. Plaintiffs therefore ask that the defendant be required to bring into Court complete records of all the time worked by each plaintiff while in the employment of the defendant, and plaintiffs pray that they be allowed such additional sums of money as the proof may show them to be entitled to recover under the provisions of the Fair Labor Standards Act.

Wherefore:

Plaintiff J. W. Bayley prays judgment against said defendant for \$1070.29, together with an additional equal amount as liquidated damages, together with fees for his attorneys and all costs of this action by him expended.

Plaintiff Henry V. Bloom prays that he have judgment against the said defendant for the sum of \$240.35, together with an additional equal amount as liquidated damages, together with fees for his attorneys and all costs of this action by him expended.

Plaintiff G. C. Kendall prays that he have judgment against said defendant for \$939.60, together with an equal additional amount as liquidated damages, together with fees for his attorneys and all costs of this action by him expended.

Plaintiff Owen Reding prays that he have judgment against the defendant for \$948.03, together with an equal additional amount as liquidated damages, together with fees for his attorneys and all costs of this action by him expended.

[fol:20] Plaintiff W. J. Bayley prays that he have judgment against the defendant for \$910.47, together with an additional equal amount as liquidated damages together with fees for his attorneys and all costs of this action by him expended.

Plaintiffs further pray that they have additional judgments for such amounts as defendant's records may show them entitled to under the Fair Labor Standards Act.

J. W. Bayley, Henry V. Bloom, G. C. Kendall, Owen Reding, W. J. Bayley, Jameson & Jameson, First National Bank Building, Fayetteville, Arkansas, Attys. for Plaintiffs, J. S. Jameson.

IN UNITED STATES DISTRICT COURT

MOTION OF DEFENDANT TO DISMISS OR IN THE ALTERNATIVE
FOR OTHER RELIEF—Filed January 23, 1942

Comes now the above named defendant and moves the Court to dismiss the claims of the several plaintiffs in this action upon the following grounds and for the following reasons to-wit:

1. The claim of the plaintiff, J. W. Bayley, for the reason that the complaint filed herein fails to state a claim upon which relief can be granted in favor of the plaintiff, J. W. Bayley and against this defendant.

2. The claim of the plaintiff, Henry V. Bloom, for alleged overtime under the Fair Labor Standards Act, for the reason that the complaint fails to state a claim upon which relief can be granted in favor of the plaintiff, Henry V. Bloom, for the recovery of such alleged overtime.

3. The claim of the plaintiff, G. C. Kendall, for alleged overtime under the Fair Labor Standards Act, for the reason that the Complaint fails to state a claim upon [fol. 21] which relief can be granted in favor of the plaintiff, G. C. Kendall, for the recovery of such alleged overtime.

4. The claim of the plaintiff, Owen Reding, for alleged overtime under the Fair Labor Standards Act, for the reason that the Complaint fails to state a claim upon which relief can be granted in favor of the plaintiff Owen Reding, for the recovery of such alleged overtime.

5. The claim of the plaintiff, W. J. Bayley, for the reason that the Complaint fails to state a claim upon which relief can be granted in favor of the plaintiff, W. J. Bayley, and against this defendant.

6. This defendant states to the Court that the plaintiffs, Henry V. Bloom, G. C. Kendall and Owen Reding, and each of them, in addition to asserting alleged claims for overtime under the Fair Labor Standards Act, also alleges, as a part and parcel of the claim asserted by them, and each of them, in the Complaint filed in this cause, claims for the recovery of wages below the minimum wage prescribed by the Fair Labor Standards Act, which alleged claim for minimum wages is not set forth in a separate or distinct count in the Complaint of said plaintiffs. In the

event the Court is of the opinion, because of the intermingling of said claims for overtime and for alleged failure to pay the minimum wage, that the Motion to Dismiss cannot be properly determined as to said last above named plaintiffs; then and in that event this defendant moves, in the alternative, that all allegations in the Complaint by the plaintiffs, Henry V. Bloom, G. C. Kendall and Owen Reding, and each of them, for the recovery of alleged overtime under the Fair Labor Standards Act be stricken from the Complaint pursuant to Rule 12(f) of the Rules of Civil Procedure for the District Courts of the United States, for the reason that said allegations are immaterial and neither state nor tend to state any claim on behalf of said plaintiffs, or either of them, or if the Court should be of the opinion that the same should not be stricken, that then and in that event, judgment be entered against said plaintiffs, and each of them, and in favor of this defendant, as to their respective claims for the recovery of alleged overtime under said Fair Labor Standards Act, pursuant to the provisions of Rule 54(b) or Rule 56(b) of the Rules of [fol. 22] Civil Procedure for the District Courts of the United States.

C. H. Rosenstein, 504 Atlas Life Building, Tulsa, Oklahoma. Price Dickson, 10½ E. Center Street, Fayetteville, Arkansas, Attorneys for Defendant. Rosenstein & Gore, 504 Atlas Life Building, Tulsa, Oklahoma, Of Counsel.

MEMORANDUM OPINION OF DISTRICT COURT ON SUSTAINING OF MOTION OF DEFENDANT TO DISMISS—Filed February 27, 1942.

United States District Court, Eighth Circuit, Western District of Arkansas

Chambers of John E. Miller, Judge.

Fort Smith, Ark.,

February 27, 1942.

[fol. 23]

Messrs. Rosenstein & Gore, 504 Atlas Life Building, Tulsa, Oklahoma. Mr. Price Dickson, 10½ East Center Street, Fayetteville, Arkansas. Messrs. Jameson & Jameson, First National Bank Building, Fayetteville, Arkansas.

In Re: J. W. Bayley, et al. v. Southland Gasoline Co.
Civil Action No. 29, Fayetteville Division.

Gentlemen:

The complaint alleges that the defendant was on and since October 24, 1938, engaged in interstate commerce and that plaintiffs were each employed by the defendant as truck drivers and that each plaintiff in that capacity drove defendant's truck each week from Arkansas to Oklahoma and from Oklahoma to Arkansas; that as such employees of the defendant they were each engaged in interstate commerce and in producing goods for interstate commerce and within the terms of the Fair Labor Standards Act of 1938; that the defendant was engaged in interstate commerce within the meaning of said Fair Labor Standards Act as a private carrier.

The plaintiff, J. W. Bayley, seeks to recover overtime compensation in the sum of \$1070.29, together with an equal amount as liquidated damages.

The plaintiff, Henry V. Bloom, seeks to recover overtime compensation in the sum of \$148.50, together with an equal amount as liquidated damages.

The plaintiff, G. C. Kendall, seeks to recover overtime compensation in the sum of \$928.80, together with a like amount as liquidated damages.

Plaintiff, Owen Redding, seeks to recover overtime compensation in the sum of \$885.23, together with a like amount as liquidated damages.

[fol. 24] Plaintiff, W. J. Bayley, seeks to recover overtime compensation in the sum of \$910.47, together with a like amount as liquidated damages.

Each of the above named plaintiffs seek to recover a reasonable attorney's fee, and the above claims are based upon Section 7 of the Fair Labor Standards Act of 1938.

The plaintiffs, Henry V. Bloom, G. C. Kendall and Owen Redding, each seek to recover amounts which they claim to be due as minimum wages under Section 6 of the Fair Labor Standards Act.

The defendant has filed a motion to dismiss the complaint as to the plaintiffs, J. W. Bayley and W. J. Bayley, and that portion of the complaint of the plaintiffs, Henry V. Bloom, G. C. Kendall and Owen Redding, which is based upon Section 7 of the Fair Labor Standards Act and which seeks to recover for overtime compensation.

No question is raised by the motion as to that part of the complaint of the plaintiffs, Henry V. Bloom, G. C.

Kendall and Owen Redding, based upon Section 6 of the Fair Labor Standards Act, or the claim for minimum compensation.

The questions presented by the motion have been thoroughly and ably briefed by respective counsel.

On May 1, 1940, the Interstate Commerce Commission exercised the power given it under Section 204 of the Motor Carrier Act of 1935, and, in effect, prescribed maximum hour regulations for drivers of trucks employed by private carriers. Under the terms of the order made by the Interstate Commerce Commission in that proceeding, the regulations became effective October 15, 1940.

Counsel for plaintiffs have stated the question involved herein as follows:

"Did the Interstate Commerce Commission have power to prescribe qualifications and maximum hours of service for the employees of the Southland Gasoline Company, a private carrier, during the interim of time during October 24, 1938 and October 15, 1940, pursuant to the provisions of Section 204 of the Motor Carrier Act?"

Able counsel also frankly state that if the Interstate Commerce Commission did, in fact, have the power to [fol. 25] prescribe such qualifications and maximum hours of service for said employees during that period of time, then the motion to dismiss should be granted.

The plaintiffs contend that under the provisions of Section 204 of the Motor Carrier Act, 49 U. S. C. A., Section 304, that the clause "if need therefor is found", appearing in A-3 of said Section is a condition precedent to the exercise of the power granted the Interstate Commerce Commission by the Act, and they argue that the power to regulate contract and common carriers granted in the same section is absolute and that the Congress by inserting the clause, "if need therefor is found", in the Act dealing with private carriers, intended to make that requirement a condition precedent to the exercise of the power to regulate.

I think the adjudicated cases settle the question against the contention of the plaintiffs.

The Congress delegated to the Interstate Commerce Commission the power to make regulations and to prescribe qualifications and maximum hours of service of employees of private carriers. This Act was passed in 1935. Ap-

proximately three years later the Congress sought to further protect employees engaged in interstate commerce by passing the Fair Labor Standards Act, but did not intend to set up two separate and distinct agencies to administer such laws and, therefore, having theretofore given the power to the Interstate Commerce Commission to prescribe qualifications and maximum hours for employees of carriers, common, contract and private, it specifically exempted such employees from the operation of the Fair Labor Standards Act.

The clause, "if need therefor is found", is not a condition precedent to the application of the Motor Carrier Act. No doubt this clause was inserted in the Act by the Congress because it was thought that private carriers operated under different conditions than contract and private carriers, but nevertheless the power to regulate existed. That power was not given to the Administrator of the Fair Labor Standards Act, and in order to settle the question Section 13 (b) was inserted in the Fair Labor Standards Act.

Therefore, the motion to dismiss is sustained and attorneys for defendant will draft an appropriate order, submit the same to attorneys for plaintiff for approval as [fol. 26] to form and send the same to the clerk of this court for presentation to me for signing and entry.

Sincerely yours, Jno. E. Miller.

IN UNITED STATES DISTRICT COURT

ORDER SUSTAINING DEFENDANT'S MOTION TO DISMISS AND DISMISSING COMPLAINT AS TO ALL CLAIMS OF PLAINTIFFS.

Entered March 5, 1942

On the 17th day of February, 1942, this cause came on for hearing pursuant to assignment upon defendant's Motion to Dismiss.

Plaintiffs appears by their attorneys, Jameson & Jameson and defendant appears by its attorney, C. H. Rosenstein (Price Dickson of counsel). The Court having heard argument of counsel, requested that briefs be filed and the motion was taken under advisement.

The Court having considered the briefs filed by counsel for the respective parties and being fully advised finds that defendant's Motion to Dismiss should be sustained

as to the entire claims of the plaintiffs, J. W. Bayley and W. J. Bayley, and as to the claims of the plaintiffs, Henry V. Bloom, G. C. Kendall and Owen Redding insofar as each of said plaintiffs claim overtime compensation pursuant to Section 7 of the Fair Labor Standards Act of 1938.

It is, therefore, ordered, adjudged and decreed that defendant's Motion to Dismiss heretofore filed in this cause be and the same hereby is granted and sustained and the complaint heretofore filed in this cause be and the same hereby is dismissed as to the respective claims of the plaintiffs as follows to-wit:

1. All claims asserted in said complaint by the plaintiff, J. W. Bayley.

2. All claims of the plaintiff, Henry V. Bloom, for the recovery of overtime compensation pursuant to Section 7 of the Fair Labor Standards Act together with the claim of said plaintiff for an equal amount as liquidated damages. The amount so claimed by Henry V. Bloom as overtime [fols. 27-33] compensation, being the sum of One Hundred forty-eight and 50/100 Dollars (\$148.50).

3. All claims of the plaintiff, G. C. Kendall, for the recovery of overtime compensation pursuant to Section 7 of the Fair Labor Standards Act together with the claim of said plaintiff for an equal amount as liquidated damages. The amount so claimed by G. C. Kendall as overtime compensation, being the sum of Nine hundred twenty-eight and 80/100 Dollars (\$928.80).

4. All claims of the plaintiff, Owen Redding, for the recovery of overtime compensation pursuant to Section 7 of the Fair Labor Standards Act together with the claim of said plaintiff for an equal amount as liquidated damages. The amount so claimed by Owen Redding as overtime compensation, being the sum of Eight hundred eighty-five and 23/100 Dollars (\$885.23).

5. All claims asserted in said complaint by the plaintiff, W. J. Bayley.

The defendant is granted ten (10) days from February 27, 1942, to file its responsive pleading to the claims of the plaintiffs, Henry V. Bloom, G. C. Kendall and Owen Redding for recovery of minimum compensation under Section 6 of the Fair Labor Standards Act.

To the action of the Court in sustaining defendant's motion to dismiss plaintiffs' complaint as to its claim therein for overtime compensation under Section 7 of the Fair Labor Standards Act, plaintiffs except, and pray for an appeal to the Circuit Court of Appeals.

This March 5, 1942.

Jno. E. Miller, District Judge.

[fol. 34] IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER OF SUBMISSION—September 12, 1942

This cause having been called for hearing in its regular order and counsel not appearing for either party to make oral argument, the same is thereupon taken by the Court as submitted on the transcript of the record from said District Court and the briefs of counsel filed herein.

[fol. 35] IN UNITED STATES CIRCUIT COURT OF APPEALS,
EIGHTH CIRCUIT

No. 12,309—November Term, A. D. 1942

J. W. BAYLEY, HENRY V. BLOOM, G. C. KENDALL, OWEN
REDING and W. J. BAYLEY, Appellants,

VS.

SOUTHLAND GASOLINE COMPANY, Appellee

Appeal from the District Court of the United States for the
Western District of Arkansas

Mr. J. S. Jameson and Mr. Paul Jameson submitted brief
for Appellant.

Mr. C. H. Rosenstein and Mr. Price Dickson submitted
brief for appellee.

Before Gardner, Woodrough, and Riddick, Circuit Judges

OPINION—November 2, 1942

Riddick, Circuit Judge, delivered the opinion of the court.

Appellants were employed by appellee for various periods
between October 24, 1938 and May 11, 1941, as motor truck
[fol. 36] drivers. Their duties required them to drive trucks

between points in Oklahoma and points in Arkansas, in the transportation and delivery of materials purchased and sold by appellee. They brought this action against appellee under the Fair Labor Standards Act of 1938, to recover for each of them either unpaid minimum wages and overtime compensation, or both, and additional equal amounts as liquidated damages, and for costs and attorneys' fees. The appellee moved to dismiss that part of the complaint seeking recoveries for overtime compensation under § 7 of the Fair Labor Standards Act (29 U. S. C. A. § 207). The motion was granted, the District Court being of the opinion that the appellants were not within the protection of the Fair Labor Standards Act with respect to maximum hours of employment and overtime compensation, because of the exemption contained in § 13 (b) of the Act (29 U. S. C. A. § 213), providing that the provisions of § 7 shall not apply "with respect to any employees with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service, pursuant to § 204 of the Motor Carrier Act." This appeal brings in question the correctness of the Court's action.

It is conceded that the Interstate Commerce Commission did not undertake the regulation of private motor carriers until May 1, 1940, when it made its finding that their regulation was needed. The District Court considered this fact unimportant, holding that the power of the Commission to regulate private carriers was not dependent upon a prior finding by the Commission that such regulation was necessary. The Court was of the opinion that the Commission had power to fix maximum hours of service of employees of private carriers from the date of the passage of the Motor Carrier Act of 1935 and that, for this reason, the provisions of the Fair Labor Standards Act were not applicable to the [fol. 37] appellants in this case. If, on the other hand, the Commission was without power, prior to its finding on May 1, 1940, to regulate the maximum hours of service of truck drivers of private carriers, it is evident that the appellants here were not deprived of the benefits of the Fair Labor Standards Act by anything in the exemption in § 13 (b) of that Act.

The relevant provisions of the Motor Carrier Act are:

"(a) *Powers and duties generally.* It shall be the duty of the Commission—

"(1) To regulate common carriers by motor vehicle as provided in this chapter, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

"(2) To regulate contract carriers by motor vehicle as provided in this chapter, and to that end the Commission may establish reasonable requirements with respect to uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

"(3) To establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment. In the event such requirements are established, the term 'motor carrier' shall be construed to include private carriers of property by motor vehicle in the administrations of sections 304 (c), 305, 320, 321, 322 (a), (b), (d), (f), and (g), and 324 of this chapter."

[fol. 38] It is apparent from a reading of the Motor Carrier Act that while the Congress determined for itself the necessity for the regulation of common and contract carriers by motor vehicle in the respects stated in the Act, it did not determine the necessity of regulating private carriers by motor vehicle, such as the appellee here, but left the determination of that question to the Interstate Commerce Commission, if, in the words of the Act, "need therefor is found." Obviously the three subsections of the Act, read together, clearly imply the intention of Congress that the power of the Commission with respect to private carriers should depend upon a finding by the Commission that the regulation was needed; that is to say, needed in the public interest in order to make effective regulation of common and contract carriers which Congress commanded, and to protect the public and the common and contract carriers from the consequences of unregulated competition by private carriers.

The rule is that where the legislature invests an administrative body or other agency of the government with power to act on or in accordance with a hearing or a finding, the delegated power does not come into existence until the hearing is had or the determination is made. In such circumstances a finding is jurisdictional and action without the finding is void. *Panama Refining Co. v. Ryan*, 293 U. S. 388, 431, 55 Sup. Ct. 241, 79 L. Ed. 446; *United States v. B. & O. Ry. Co.*, 293 U. S. 454, 462, 55 Sup. Ct. 268, 79 L. Ed. 587; *Mahler v. Eby*, 264 U. S. 32, 44 Sup. Ct. 283, 68 L. Ed. 549; *Wichita Railroad & Light Co. v. Public Utilities Commission*, 260 U. S. 48, 43 Sup. Ct. 55, 67 L. Ed. 112.

Moreover, as this Court pointed out in *Fleming v. Hawkeye Pearl Button Co.*, 8 Cir., 113 F. 2d 52, the Fair Labor Standards Act is remedial and must be liberally construed. [fol. 39] And see *United States v. Darby*, 312 U. S. 100, 61 Sup. Ct. 451, 85 L. Ed. 609. The obvious purpose of the Act is to include within its protection every employee engaged in interstate commerce or in the production of goods for interstate commerce, except those specifically excepted. *Bowie v. Gonzalez*, 1 Cir., 117 F. 2d 11. The section dealing with exemptions may not be given an interpretation which would lead to results contrary to the evident scope and purpose of the Act. And we think the interpretation contended for by appellee would produce that result. Under the Motor Carrier Act of 1935, the Commission was free to decide the question of the necessity of the regulation of private carriers either way. It might have found that the necessity did not exist. In the event of such a finding, the employees of private motor carriers, under the holding of the District Court, would be without the protection of either Act. They would constitute a class of employees in interstate commerce excepted from any regulation whatsoever, a result clearly incompatible with the obvious intent and purpose of the Fair Labor Standards Act.

We hold that until the Interstate Commerce Commission made the finding of the necessity of the regulation of private carriers with respect to the matters specified in the Motor Carrier Act of 1935, it was without power to prescribe either qualifications or maximum hours for the employees of such carriers. This holding agrees with the interpretation placed upon the Fair Labor Standards Act by the Administrator in his Interpretative Bulletin No. 9.

and with the interpretation of the Motor Carrier Act by the Interstate Commerce Commission, implied from the fact that it did not undertake the regulation of private motor carriers until it had made a finding that such regulation was necessary. Such interpretations by the agencies charged with the administration of the Acts are entitled to [fol. 40] great weight. *United States v. American Trucking Associations*, 310 U. S. 534, 60 Sup. Ct. 1059, 84 L. Ed. 1345; *Norwegian Nitrogen Products Co. v. United States*, 288 U. S. 294, 324, 325, 53 Sup. Ct. 350, 77 L. Ed. 796. In this case they are undoubtedly correct.

Accordingly the judgment of the District Court is reversed and this case is remanded for further proceedings in conformity with this opinion.

[fols. 41-43] IN UNITED STATES CIRCUIT COURT OF APPEALS,
EIGHTH CIRCUIT

No. 12309—November Term, 1942

J. W. BAILEY, HENRY V. BLOOM, G. C. KENDALL, OWEN
REDING, and W. J. BAYLEY, Appellants,

VS.

SOUTHLAND GASOLINE COMPANY

JUDGMENT—November 2, 1942

Appeal from the District Court of the United States for the
Western District of Arkansas

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Arkansas, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, reversed with costs; and that J. W. Bayley, Henry V. Bloom, G. C. Kendall, Owen Reding, and W. J. Bayley have and recover against the Southland Gasoline Company the sum of.— Dollars for their costs in this behalf expended and have execution therefor.

And it is further ordered by this Court that this cause, be, and the same is hereby, remanded to the said District Court for further proceedings in conformity with the opinion of this Court filed herein.

November 2, 1942.

[fol. 44] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 45] SUPREME COURT OF THE UNITED STATES, OCTOBER
Term, 1942

No. 581

ORDER ALLOWING CERTIORARI—Filed January 18, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is Granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 46] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION TO OMIT CERTAIN MATTERS FROM THE PRINTED
RECORD—Filed January 30, 1943

Come now the undersigned, Counsel of Record for Petitioner and Counsel of Record for Respondents, and show to the Court that pursuant to Paragraph 8 of Rule 38 they do hereby stipulate to omit from the Printed Record the following matters not essential to a consideration of the questions presented by the Petition for Writ of Certiorari to-wit:

1. Notice of Appeal and Notice to Counsel for Appellee of filing Notice of Appeal. (Tr. fol. 1 and 2, pp. 1-2.)
2. Certificate of Service. (Tr. fol. 27, p. 22.)
3. Bond for Costs on Appeal. (Tr. fol. 34, 35 and 36, pp. 27-29.)

4. Designation of Record on Appeal and Exhibit "A" Statement of Points To Be Relied Upon on Appeal. (Tr. fol. 37 and 38, pp. 30-31.)

5. Order Extending Time For Docketing Record on Appeal. (Tr. fol. 39, p. 31.)

6. Clerk's Certificate to Transcript. (Tr. fol. 40, pp. 31-32.)

7. Appearances of Counsel in the United States Circuit Court of Appeals, Eighth Circuit. (Tr. fol. 33 and 34, p. 33.)

8. Motion of Appellee to Stay Issuance of Mandate, including Certificate of Counsel and Certificate of Service and Order Staying Issuance of Mandate. (Tr. fol. 42 and 43, pp. 40-41.)

[fol. 47] Witness the signatures of counsel for Petitioner and of counsel for Respondents, this 28 day of January, 1943.

Claude H. Rosenstein, Counsel for Petitioner. J. S. Jameson, Counsel for Respondents.

Endorsed on Cover: Enter Claude H. Rosenstein. File No. 47082. U. S. Circuit Court of Appeals, Eighth Circuit. Term No. 581. Southland Gasoline Company, Petitioner, vs. J. W. Bayley, Henry V. Bloom, G. C. Kendall, et al. Petition for writ of certiorari and exhibit thereto. Filed December 10, 1942. Term No. 581 O. T. 1942.